United States Department of Labor
Employees' Compensation Appeals Board

A.K., Appellant	)	
and	)	**Docket No. 10-1775**
	)	**Issued: April 6, 2011**
DEPARTMENT OF DEFENSE, DEFENSE CONTRACT AUDIT AGENCY, Central Islip, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 22, 2010 appellant, through his representative, filed a timely appeal from the June 8, 2010 merit decision of the Office of Workers' Compensation Programs, which terminated his compensation for bilateral carpal tunnel syndrome. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly terminated compensation benefits for the accepted condition of bilateral carpal tunnel syndrome.

FACTUAL HISTORY

In the prior appeal,[1] the Board noted that in 2001 appellant, a 41-year-old senior auditor, filed a claim alleging that he developed bilateral carpal tunnel syndrome in the performance of

[1] Docket No. 06-1514 (issued January 8, 2007).

duty. The Office accepted his claim for bilateral carpal tunnel syndrome and paid compensation on the periodic rolls.[2] On that appeal, the Board found that the Office properly suspended compensation under 5 U.S.C. § 8123(d), did not meet its burden to terminate wage-loss compensation and improperly denied appellant's request for reconsideration. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

A conflict arose between Dr. Peter Chiu, appellant's physiatrist, and Dr. Michael J. Katz, the referral orthopedic surgeon. Dr. Chiu diagnosed carpal tunnel syndrome, among other things, and recommended physical therapy and prescriptions. He found that appellant could not return to work. Dr. Katz diagnosed status post bilateral carpal tunnel syndrome with residual symptoms as per electromyogram and nerve conduction studies. He recommended symptomatic orthopedic care every two months and home exercises for the hands. Dr. Katz found that appellant could work eight hours a day.

To resolve this conflict, the Office referred appellant, together with the record and a statement of accepted facts, to Dr. Bradley White, a Board-certified orthopedic surgeon. On April 5, 2010 Dr. White related appellant's history of injury in 2001. He noted that appellant had a previous history of bilateral carpal tunnel syndrome, for which he underwent bilateral carpal tunnel releases in 1998. These surgeries did relieve appellant's symptoms, but he noted a return of symptoms in 2001. Dr. White noted that appellant was treated over the next eight-and-a-half years with a constant regimen of chronic narcotic analgesics, as well as several sessions of physical therapy and several trigger point injections for complaints of neck pain.

Dr. White described appellant's medical treatment and his current complaints. He described his finding on physical examination.[3] Dr. White reviewed appellant's medical record, including a January 7, 2008 electromyogram and nerve conduction study finding mild right carpal tunnel syndrome and moderate left carpal tunnel syndrome without electrodiagnostic evidence of cervical radiculopathy. He then reviewed a surveillance video from July 2005:

> "A clandestine surveillance video of [appellant] was reviewed for this evaluation. This video ran for approximately 40 minutes and showed [him] working outside his house. At the beginning of the video [appellant] is busy assembling a child's plastic toy riding truck. The assembly of this item clearly demonstrated the [his] capabilities in the use of his hands in a task that required hand strength and dexterity in the use of multiple tools. [Appellant] then continued to do fairly heavy manual work. He packed, lifted, carried and dumped boxes of trash. [Appellant] broke up small tree twigs and branches easily with both hands. He

[2] The Board noted that the Office previously accepted that appellant developed bilateral carpal tunnel syndrome in the performance of duty in 1997. The Office authorized surgeries and he returned to his job in 1998.

[3] Well-developed upper extremities showed no evidence of deformity, swelling, ecchymosis, complex regional pain syndrome or reflex sympathetic dystrophy, hypersensitivity or muscular wasting. Grip strength was strong. Tinel's signs were equivocal at the median nerves at the carpal tunnel bilaterally. There was some reproduced discomfort at the carpal tunnels with this testing, but questionable reproduction of a median nerve distribution to the elicited dysesthesia. Phalen's maneuvers were also equivocal, as appellant found the maneuver difficult to perform.

appeared to have no problems with grip, strength or dexterity of his hands in the performance of any of these tasks."[4]

Dr. White diagnosed aggravation of previously existing bilateral carpal tunnel syndrome, status post bilateral carpal tunnel releases performed three years prior to the date of the accepted injury with ongoing chronic bilateral median nerve dysesthesias. He found no evidence of any ongoing disability causally related to the accepted condition and no indication for any further treatment. Dr. White explained that appellant was capable of performing activities of daily living without restriction, as was especially evident upon viewing the surveillance video. He concluded: "[Appellant] should be able to return to regular duties in his past position on a full[-] time basis at the [employing establishment]."

On May 24, 2010 Dr. Chiu reviewed Dr. White's report and expressed several disagreements, including Dr. White's characterization of appellant's drug regimen, his comment on the absence of physical therapy, his comment on Dr. Chiu's treatment notes and his opinion that appellant's neck condition was unrelated to his accepted work injury.

Dr. Chiu found that appellant had not reached maximum medical improvement. He stated that pain medication and neck injections had afforded appellant fair temporary pain relief. Dr. Chiu recommended continuing conservative care for appellant's neck and hands and wrists. He expressed the opinion that appellant's neck and bilateral hand/wrist condition were the result of the accepted work injury due to cumulative repetitive traumatic events from using computers and computer-related activities. Further, Dr. Chiu concluded that appellant was not able to return to his prior work duties. He found appellant totally and permanently disabled as a result of the accepted injury.

In a decision dated June 8, 2010, the Office terminated appellant's compensation benefits for the accepted bilateral carpal tunnel syndrome. It found that Dr. White's opinion represented the weight of the medical opinion evidence.

On appeal, appellant's representative argues that the Office's acceptance of bilateral carpal tunnel is too narrow, that it should expand its acceptance of appellant's claim to include bilateral median nerve neuropathies, complex regional pain syndrome, cervical disc disease and cervical spondylosis. He argues that the reports of Dr. Katz and Dr. White are therefore based on an inaccurate history and must be disregarded. Appellant argues that the evidence firmly supports continuing work-related disability. He charges the Office with adopting an adversarial approach and subjecting appellant's physicians to a greater level of scrutiny. Appellant's representative asks the Board to find ongoing disability and to order the expansion of appellant's claim.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[5] Once the Office accepts a

[4] The Office notified appellant's attorney that it was providing Dr. White a surveillance DVD.

[5] 5 U.S.C. § 8102(a).

claim, it has the burden of proof to justify termination or modification of compensation benefits.[6] After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[7]

If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[8] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS

To resolve the conflict between Dr. Chiu, appellant's physiatrist, and Dr. Katz, the referral orthopedic surgeon, the Office properly referred appellant to Dr. White, the orthopedic surgeon and impartial medical specialist. The Office provided Dr. White with appellant's record and a statement of accepted facts so he could base his opinion on a proper factual and medical background. The statement of accepted facts correctly reflected that the Office had accepted appellant's injury claim in 2001 for bilateral carpal tunnel syndrome. The Office also provided Dr. White with a surveillance digital video disc (DVD) from July 2005.

Dr. White noted that appellant's employment injury in 2001 had caused an aggravation of his previous bilateral carpal tunnel syndrome with ongoing chronic bilateral median nerve dysesthesias, but he found no evidence of ongoing disability for work and no indication for further treatment of his carpal tunnel syndrome. His findings on physical examination were normal with only equivocal maneuvers at the carpal tunnel. The video surveillance from July 2005 showed appellant's ability to use his hands with no apparent problems in grip, strength or dexterity. Dr. White reasoned that it was especially evident that appellant was capable of performing the activities of daily living without restriction. He concluded that appellant was capable of returning to the regular duties of his date-of-injury position on a full-time basis.

The Board finds that Dr. White's opinion is based on a proper history and is sufficiently well rationalized that it constitutes the special weight of the medical opinion evidence. As the weight of the medical evidence establishes that appellant's 2001 carpal tunnel injury no longer causes disability for work or need for regular medical attention the Board finds that the Office has met its burden of proof to terminate compensation benefits for the accepted bilateral carpal tunnel syndrome. The Board will therefore affirm the Office's June 8, 2010 decision.

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[6] *Harold S. McGough*, 36 ECAB 332 (1984).

[7] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[8] 5 U.S.C. § 8123(a).

[9] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Dr. Chiu's May 24, 2010 report reiterated his position that appellant needs continuing conservative care for his hands and wrists, which resulted from computer-related activities at work, and that appellant is not able to return to his prior work duties. This cumulative opinion only reinforces Dr. Chiu's conflict with Dr. Katz, a conflict that Dr. White has now resolved. The Board finds that it does not create a second conflict with Dr. White.

Appellant's representative argues on appeal that the Office's acceptance of bilateral carpal tunnel was too narrow and should be expanded to include a number of other medical conditions. However, that is immaterial to the issue on this appeal, which is confined to whether the Office properly terminated compensation benefits for bilateral carpal tunnel syndrome. Appellant is free, of course, to claim compensation for other medical conditions not accepted by the Office, and he would have the burden of proof to establish his entitlement to compensation for these other medical conditions. Presently, the Office has accepted only the medical condition of bilateral carpal tunnel syndrome and has paid compensation to appellant only on that basis. Its burden, therefore, was to justify its termination of the compensation it was paying appellant for his bilateral carpal tunnel syndrome.

Appellant's representative argues that the evidence firmly supports continuing work-related disability. Although Dr. Chiu remains of that opinion, Dr. White's opinion constitutes the special weight of the medical opinion evidence and resolves the issue in the negative. The Board notes that Dr. Chiu did not comment on Dr. White's review of the surveillance DVD, which obviously played an important role in his determination that appellant could perform activities of daily living without restriction and could return to regular duties at work.

Appellant's representative charges the Office with adopting an adversarial approach, but the charge is vague, and the Board sees no proof in the record.

CONCLUSION

The Board finds that the Office properly terminated compensation benefits for the accepted condition of bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the June 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board